

Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE McGILL

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LAW LIBRARY

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MCGILL UNIVERSITY

by Dean Roderick A.
Macdonald

Fellow students of the law, on behalf of my colleagues and the Administrative Staff, let me welcome you to the Faculty of Law of McGill University.

Futurs avocats et avocates, permettez-moi, au nom de tous mes collègues et de tout le personnel d'administration, de vous accueillir à la Faculté de droit de l'Université de McGill.

Cette faculté de droit, que vous avez choisie et qui vous a choisi, fut la première au Canada. Ses origines remontent à 1848 et elle compte, parmi ses quelques trois mille diplômés, plusieurs éminents juristes, notamment:

*l'honorable Alexander Morris (B.C.L. 1850) premier juge en chef de la Cour du Banc de la Reine de Manitoba et lieutenant-gouverneur des territoires du nord-ouest;

*le très honorable, Wilfrid Laurier (B.C.L. 1864) premier Ministre de Canada pendant quinze ans;

*l'honorable Pierre-Basil Mignault (B.C.L. 1873) juge à la Cour suprême du Canada, auteur du traité Droit Civil Canadien, professeur de carrière à notre faculté.

*l'honorable Charles J. Doherty (B.C.L. 1876) fondateur de l'Association du

Barreau Canadien, Ministre de la justice fédérale, juge à la Cour supérieure du Québec;

*Eugène Lafleur (B.C.L. 1880) avocat distingué; également de droit à McGill;

*Annie MacDonald Langstaff (B.C.L. 1913) la première femme à recevoir une licence en droit au Québec;

*l'honorable Harry Batshaw (B.C.L. 1924) juge à la Cour supérieure du Québec, premier avocat à accéder à la magistrature;

*Frank R. Scott (B.C.L. 1927) professeur de carrière à McGill, doyen de la faculté, constitutionnaliste, poète renommé;

*l'honorable George S. Challies (B.C.L. 1935) juge en chef de la Cour supérieure du Québec, et rédacteur du Code de procédure civile actuel;

*Jean de Grandpré (B.C.L. 1943) homme d'affaires, président des Entreprises Bell Canada Limitée;

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TORY LANDSLIDE Western View

The Liberal massacre was both a victory and a defeat for Western representation. A victory, because for many years Westerners have sought an overthrow of the Liberal regime whose leader turned his back to Western Canadians with a wave of his middle finger. Economically we have seen an energy policy capitalizing on the motherhood issue of Canadianization. The reality was the devastation of the Western oil industry, both Canadian and foreign-owned. The results have been massive unemployment and economic stagnation for the West.

Despite the efforts of John Turner to resurrect the Liberal Party in Western

Canada, Trudeau's legacy remains seared into the Western heart. Witness the failure of the Liberals to improve upon their dismal showing in the previous election. In 1980 only two Liberals were elected west of Ontario.

The Tory mandate is to renew the concept of federalism, via a majority strongly representing all areas of the country. For the West, it is crucial that Westerners play an integral role in the formation of federal policies. Only this can stem the tide of the declining legitimacy of a federal government dominated by central Canada.

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ADRESSE

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*l'honorable Gerald A. LeDain (B.C.L. 1949) ancien professeur de carrière à la Faculté, doyen d'Osgoode Hall Law School, récemment nommé à la Cour suprême du Canada;

*l'honorable Donald Johnston (B.C.L. 1958) Ministre de la justice fédérale actuel.

Ces éminents juristes ne sont que quelques-uns de nos diplômés distingués: on trouve également deux premiers ministres canadiens; six juges à la Cour suprême du Canada, plusieurs premiers ministres provinciales, nombreux juges aux Cours d'appels et aux Cours supérieures, ministres de la Couronne, diplomats, hommes, d'affaires, professeurs et avocats.

I am confident that, in the year 2084, when the Dean welcomes the incoming class, several of you present in this room today will figure on his list of prominent graduates of McGill's Faculty of Law. But McGill is not simply an institution which takes pride in her well-known alumni and alumnae; each graduate of McGill is and each of you is an important member of the legal community. Today you contribute through your diverse backgrounds and interests to the unique character of the Faculty; later, when you walk across the stage at Convocation, you will join the some 3000 graduates of the Faculty who have, in a variety of different ways, made significant contributions to the law and to the public it serves. Let me emphasize, as you embark upon a legal career, that each one of you will be, in our eyes, an illustrious graduate of our Faculty.

But what does it mean to be a student of the law? What is this endeavour which you have undertaken, and

which we, as a Faculty, share with you? In brief, what is a legal education all about? I take it that you would all agree that the study of law is both a professional training and an academic discipline.

In pursuit of the former objective the Faculty offers two degree streams (the B.C.L. and the LL.B) within our National Programme. Thus, graduates of McGill are equipped to exercise their calling in every Canadian jurisdiction. What is more, our curriculum is designed to respond to the needs of those intending to pursue careers in the public and private sectors, for which legal training is an asset rather than a formal prerequisite.

But it is the opportunity presented by the meeting of the two great Western legal traditions, the civil law and the common law, which gives the study of law at McGill its special character. The comparative study of the institutions, principles and rules of each is a central feature in our academic endeavours; and our long standing tradition of teaching in both the English and French languages complements this aspect of our programmes. It is often said by linguists that you never really understand your own language until you have mastered another. How much more true this is of law. Like the study of language, the study of law is a complex undertaking; the earlier it is undertaken, the more successfully it can be pursued. For this reason our curriculum is structured so that every student has the opportunity to study a number of private law subjects in both degree streams by the end of second year.

We take pride in our academic and professional traditions and in the contributions of our graduates to the bar, the bench and the schools.

arly community. In these difficult economic times we are especially pleased that the value of McGill's National Programme and our approach to the study of law is appreciated across Canada and in major centres in the United States. Our graduates now may be found from Vancouver to Boston, from Amos to Montmagny.

These last points lead me to consider with you briefly what the law is all about. In the past half century, it has been common to describe the lawyer as a social engineer: as an expert who may be called in to solve any social problem. Yet this image is now somewhat tarnished. For we have discovered, to our dismay, that law cannot make all people healthy, make them love each other, make the poor rich, and end discrimination. Sadly, it seems, that when called in aid of some noble social purpose, the law has far from solving problems often exacerbated them.

In this paradox, I believe, lies a clue to understanding which you have chosen. The law is not merely a tool; nor is the lawyer merely a technician. One might say more correctly, that the various forms of the law comprise a brace of tools; for his part the lawyer is a master carpenter, knowledgeable about and skilled in the use of these tools. Let me pursue this analogy for a moment.

If we were confronted with a particular social problem (say the human equivalent of holding two pieces of wood together) we know that a screw and a scredriver, a hammer and nails, and glue and clamps are each plausible means for achieving our purpose. Understanding the advantages and disadvantages of each combination allows us to deploy each of these instruments to optimal advantage.

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what dick thinks

There are two items I'd like to mention this week. First, there has been some confusion about the new rules concerning smoking in the library. I am informed by Stephen Fogarty that the referendum on smoking last year preserved the status quo on the fifth and sixth floor. In other words, smoking on the fifth and sixth floors is permitted only in the smoking half. I think everyone will be best accommodated if we stick to this arrangement.

Second, today's General Assembly will discuss, among other things, the idea of starting first term earlier in future years. The exam timetable is unacceptably confined into a ten day period as a result of the late start date (a date which is later than that at other law

schools) and the late start date brings us perilously close to not fulfilling Bar requirements. In particular, the Law Society of Upper Canada has a fifteen week term requirement for law school graduates and we are already under that. The bar requirements have been used, in the past, as a reason for keeping the exam timetable so short. Having seen the headache a ten day schedule inevitably creates for a sizeable minority of students, I think an earlier start date could be a solution. Please come today to voice your opinions on this. Faculty Council is meeting tomorrow, and if the General Assembly approves, the LSA will take a proposal to that meeting concerning the start date issue.

Richard Janda

LETTERS

Dear Madam Editor,

It was good to see this year's first issue of Quid Novi.

When he was Prime Minister, Pierre Trudeau was mercilessly attacked in commentaries and cartoons in the press. The moment he announced his impending retirement, the attacks ceased, as if by magic. This was in recognition of the transfer from public to private life.

I do hope that Quid Novi will respect this tradition with respect to our recently retired Dean insofar as his decanal duties and functions are concerned.

With all best wishes for a successful year, I remain,

Yours Sincerely,
John Durnford

To the Editor,

Yves Fortier, former president of the Canadian Bar Association, spoke at the Faculty on Monday, September 10. Mr. Fortier is a man of impressive credentials; he commands respect. He is warm and sincere, and one wants to believe what he says. But I found myself listening to a story from another world in a language that I do not understand.

The essence of Mr. Fortier's message was that in order to find a place in the legal profession or in any related field, we must specialize. Because the economic future is bleak and jobs are scarce, people no longer speak of "progress" or "economic expansion"; they speak of "efficiency". "Efficiency" is the key to further economic growth. In the face

Student Wins LRC Prize

Congratulations are in order for Lenny Abramowicz (LL.B. IV) who received second prize in the Law Day 1984 Essay Competition co-sponsored by the Law Reform Commission of Canada. His essay entitled "A Critique of Canada's Progressive Income Tax System".

of inflation, "efficiency" would seem to be a humbler and more realistic goal than "progress" but it is merely a new label for the same old game. What we need is a new vocabulary that will provide a completely new base from which we can speak about and perceive changes in our world.

With all due respect to Mr. Fortier, the world he sees and lives in cannot be my world. As students, we need a clear idea of what awaits us as future lawyers. We need suggestions as to what can and should be done about the preparations for our careers. We need these things to be expressed in a vocabulary which we understand to be true to our own experience.

Perhaps we must attempt to change some of the structures controlling our society; perhaps we simply must find a way to react to what is happening around us without the old assumptions and with some new, more appropriate ones. Perhaps some of these changes are already going on and we simply don't see them.

I would like to hear from someone who can explain what is going on around me and who can speak in a language that I can use.

Fred Enns

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ANNOUNCEMENT

General Assembly!!

Wednesday September 19th
12:00 Moot Court
* Starting Term earlier
* Curriculum reform
* Marking reform
* Smoking in the Library
* Conference on Community Legal Self-Help

Attendance mandatory

FURTHER ANNOUNCEMENT

Dean's Hot Seat!!

Thursday September 20th
12:00 Moot Court
Dean Macdonald will answer questions on any matter you care to raise, including scheduling, bumping, curriculum, and what it's like to be Dean while babysitting two kids.

Funding Requests

To All Groups, Associations Funding Requests Deadline

If you are intending to seek funding from the LSA for the 1984-85 year, please submit your request by 12:00 noon Friday, September 1984, at the LSA Office in the mailbox marked Treasurer.

Requests must be submitted in writing, showing a budget breakdown for the year. Photocopies of receipts from last year and of quotations for planned events and expenses for this year are requested, wherever possible, to ensure that your request is given full consideration. You should also indicate the revenues you are requesting or expecting from other sources, including the Office of the Dean, the Faculty or Students' Society.

We shall make every effort to treat each request fairly. I am sure you will understand that the coffers of the LSA are not unlimited, and that there are new groups being organized every year, all of which will be requesting funding. If you have any questions, please do not hesitate to contact me or LSA President Richard Janda.

**Yves Ménard
Treasurer**

Si votre groupe ou association à l'intention de faire une demande de fonds auprès de l'AED pour l'année 1984-85, veuillez soumettre votre requête avant Midi, Vendredi 28 Septembre, 1984, au bureau de l'AED dans la boîte aux lettres de Trésorier.

Les demandes de fonds doivent être faites par écrit et doivent inclure le budget annuel de club. Des photo-

copies de reçus de l'an dernier et des estimés des coûts pour les activités pour l'année 1984-85 sont requis pour qu'ainsi votre requête soit considérée adéquatement. Vous devez également indiquer les fonds que vous demandez ou compter recevoir d'autres sources tel le bureau du Doyen, la faculté ou l'association des étudiants de McGill.

Nous tenterons de nous assurer que votre requête reçoive un traitement juste et équitable. J'ose espérer que vous comprendrez que les coffres de l'AED sont assez limités et qu'il y a de nouveaux groupes organisés chaque année et tout ces groupes vont faire des demandes de fonds. Si vous avez des questions, n'hésitez pas à me contacter ou contacter Richard Janda, président de l'AED.

**Yves Ménard
Trésorier**

**Tory Landslide:
A Western View**

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While the West rejoices at the Tory majority, it also recognizes the dangers of a government still dominated by central Canadians MP's. The four Western provinces have elected 58 Tory representatives. Quebec alone has 58 representatives, and Ontario is stronger still with 67 Tory MP's. Brian Mulroney must carefully balance the jealously guarded interests of Central Canada against the urgent needs of Western and Atlantic Canada. Only this can renew Westerners' flagging faith in Canadian federalism.

**Dale Lysak
Todd Van Vliet**

REPORT FROM FACULTY COUNCIL REP

As promised last year, I shall report periodically to you in Quid Novi about what I am doing as your representative on Faculty Council. Throughout the year I shall draw your attention to various committee proposals for reform. I recognize of course that keeping election promises and making specific proposals forces me to break dramatically with long-standing Canadian political tradition. I apologize for this unpatriotic behaviour.

After chairing the LSA Committee on Curriculum and Teaching for a couple of months now, I am pleased to say that this group has been meeting regularly since mid-summer. The mandate of the Committee is twofold: first, to bring forward detailed, constructive proposals on various curricular issues; second, to serve as a new forum in the Faculty for critical discussion on legal studies. It is perhaps this second purpose which in the long term will prove most valuable. For, to quote our own Dean Macdonald, "thoughtful curricular debate is a law school's primary heuristic device" [(1982) 32 J. Legal Ed. 569].

The Committee presently has a number of projects in the works. Among them are a proposal for an upper year Research and Writing Seminar and a project seeking to expand the existing clinical programme at McGill. This latter goal necessitates a good deal of interesting work, and we invite you to get involved. The Committee meets every Monday at 1:00 p.m. in the LSA Office.

We are especially pleased to report that one recent

project should soon come to fruition. This is a proposal for a Law Seminar Series within the Faculty. It would consist of a series of informal seminars given in the Common Room and would seek to bring together various groups of the School in a relaxed yet stimulating atmosphere. The seminars would be given either by professors, graduate students, or interested undergraduates, and would be held either Thursday or Friday at 4:00 p.m. The range of possible topics is limited only by our imaginations. We are pleased to say that the response so far to this proposal has been overwhelming, and we are therefore hopeful of relative success. It has even been suggested that a modest budget for sherry or other refreshments could be forthcoming.

Should you have any suggestions or wish to get involved with this project, please do not hesitate to contact the Seminar Series Organizing Committee ■ Rob Horwood, Sandra Stephenson, Jill Frank, or myself.

**Daniel Gogek
Chairperson,
Committee on Curriculum
& Teaching**

Announcement

Women in Law will be presenting the annual wine and cheese party on Thursday, September 20, at 4:00 p.m. Join us for a taste of the grape, some munchies, and light conversation in the common room. Everyone is welcome. The festivities will last until 5:30.

OBSERVATIONS

The "Hi, howarya, how was your summer's" are out of the way, and mooting problems are about to be assigned. It is time, I think, to assess the situation: we are clearly back at law school. The brief summer hiatus ■ for those of us fortunate enough not to have been sojourning in Inuvik ■ has passed as quickly as the Popemobile passed Peel and Sherbrooke.

Speaking of which, isn't he an impressive guy? (The Pope, I mean, not Mike Schuster.) As he stood behind the tinted plexiglass, blessing the multitudes at 30 miles an hour beneath the offices of Ogilvy, Renault, I think that I too could be Pope. Given the proper training and a religious upbringing. But, alas, I was born an Anglican, and the best I can aspire to is the directorship of a few banks and corporations. Or perhaps an appointment to the Senate. Or even an ambassadorship in Tahiti, where, it is said, the sand never tires.

Certainly the Conservatives never tire. Pesky fellows. And so, after twenty dismal years of political ineptitude, they have finally given the Liberals a thorough kick in the pants, as it were. May Pat Nowlan finally be given the position he deserves: special emissary to Baffin Island.

On that note I will depart, with only the following to add: although the sand never tires in Tahiti, it is much cheaper to spend one's Christmases in Orlando.

Scott Turner

Address

Cont'd from p. 2

But we would also understand that the use of each commits us to a relatively fixed course of future conduct. If you have ever glued a cabinet you later have to disassemble quickly, you learn the relative merits and demerits of screws and glue. Our legal instruments are like a carpenter's tools. They are more than mere instruments; they free us to create efficiently, but they limit our creations.

Pursuing this analogy we could also say that sometimes we have a chest full of tools, but that none of them is appropriate for the problem confronting us. That is, if we had a screwdriver, we know that it would be good for driving screws, tolerable as a rough chisel, perhaps deployable in a pinch as a hammer, but totally useless as a level. Legal instruments are, like a carpenter's tools, crafted for certain purposes; they are capable of wreaking havoc when deployed indiscriminately.

The lawyer is not an engineer, but he is an architect of social structure. Knowing what can be accomplished with available legal materials and knowing how best to deploy these materials is the task of the jurist. This truly is where comparative law and the study of our two great traditions is most helpful. You will be called upon to advise clients about drafting contracts, incorporating companies, setting up partnerships (including that partnership known as marriage), drafting wills, dealing with governmental departments, and going to court. How successfully you accomplish your tasks will depend on how well you know the limits of all legal forms.

Let me give you an example which illustrates, albeit in a somewhat homespun way, the

issues daily confronted by lawyers. Imagine, if you will, two children fighting over how to split up a candy bar which they have purchased with money given to them by a parent. It is conceivable that in all such cases they would recur to a parent in order to obtain a just division just as some weaker members of the profession recur constantly to courts to solve disputes. But imagine a solution such as "eldest cuts, youngest gets first pick." Here one solves the problem and, at the same time gives the children a technique which they can apply, even in the absence of a parent, to deal with any future disagreements. A few years ago, when I gave this problem to a class, I was initially baffled when a student inquired "what do you do if there are three children?" Yet a creative solution soon came from another student: "Buy a box of smarties!" In other words, do not let yourself be stymied by the way a problem is presented; if need be, transform it into one which can be solved using the resources at hand. Here one sees the lawyer, and legal education, at its best. One also sees here why it is I began today by addressing you as fellow students of the law.

Votre éducation juridique ne cesse pas le moment que vous quittez la Faculté; vous

allez continuellement vous éduquer. Nous ne prétendons pas, en trois ou quatre ans, vous enseigner tout ce qu'il faut savoir. Nous ne pouvons que vous offrir les éléments essentiels pour le processus d'auto éducation future, et vous donner le goût de poursuivre ce processus. Dès aujourd'hui, vous deviendrez un étudiant de droit à vie, même si vous exercez la profession, devenez un fonctionnaire, ou (comme plusieurs de nos diplômés) entrez le monde d'affaires.

However you choose to employ your legal education, you will find your legal career, commencing tomorrow, frequently difficult, at times frustrating, occasionally disappointing, but always challenging. At its outset, let me, on behalf of all my colleagues, wish you the very best.

Le comité de rédaction vous invite à contribuer au Quid Novi en nous faisant parvenir des articles, des lettres au Quid Novi, ainsi que toute annonce concernant les activités à venir. Nous nous prions de les soumettre avant le vendredi de la semaine précédant la publication du journal. Le bureau de Quid Novi se trouve à côté du bureau du LSA. Les réunions se tiendront tous les lundis à 1:00 pm.

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